STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
JOSEPH L. TUMBLIN,	)	
	)	
	)	
Complainant,	)	CHARGE NO(S): 2007CF0204
	)	EEOC NO(S): N/A
and	)	ALS NO(S): 07-615
	)	
YKK CORPORATION OF AMERICA,	)	
	)	
	)	
Respondent.	)	

NOTICE

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above named case. Accordingly, pursuant to Section 8A-103(A) and/or 8B-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

STATE OF ILLINOIS	)	
HUMAN RIGHTS COMMISSION	)	Entered this 7th day of January 2011

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
JOSEPH L. TUMBLIN,	)	
	)	
Complainant,	)	
	)	**Charge No.: 2007CF0204**
and	)	**EEOC No.: N/A**
	)	**ALS No.: 07-615**
YKK CORPORATION OF AMERICA,	)	
	)	**Judge Lester G. Bovia, Jr.**
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter has come to be heard on Respondent's Motion to Dismiss ("Motion"). Complainant filed a response to the Motion, and Respondent filed a reply.

The Illinois Department of Human Rights ("Department") is an additional statutory agency that has issued state actions in this matter. Therefore, the Department is an additional party of record. Moreover, the Department has been duly served with the Motion and given an opportunity to be heard. Accordingly, this matter is now ready for disposition.

FINDINGS OF FACT

The following facts were derived from uncontested sections of the pleadings, affidavits, and other documents submitted by the parties. The findings did not require, and were not the result of, credibility determinations. Moreover, all evidence was viewed in the light most favorable to Complainant. Facts not discussed herein were deemed immaterial.

1. From March 2004 until February 2007, Complainant was employed as a customer service estimator in the Illinois branch office of YKK AP America, Inc. ("YKK AP America").

2. YKK AP America is a subsidiary of Respondent.

3. During the relevant time period, YKK AP America never had 15 or more employees within Illinois.

4. During the relevant time period, Respondent had no employees within Illinois.

5. On July 31, 2006, Complainant filed a charge with the Department alleging discrimination based on his race and sexual orientation. Respondent denies Complainant's allegations.

CONCLUSIONS OF LAW

1. Neither Respondent nor YKK AP America is an "employer" as that term is defined in the Illinois Human Rights Act ("Act"), 775 ILCS 5/2-101(B)(1)(a).

2. The Commission has no jurisdiction over this matter.

3. Respondent is entitled to a recommended order of dismissal as a matter of law.

DISCUSSION

Respondent argues that Complainant has named the wrong party respondent. Respondent claims that Complainant's actual employer was YKK AP America, a subsidiary of Respondent, and not Respondent. Respondent also argues that the Commission has no jurisdiction over this matter in any event because neither Respondent nor YKK AP America is an "employer" as that term is defined by the Act.

The Commission is empowered to preside over only those matters prescribed by the Act. Davies and Seguin Servs., Inc., IHRC, ALS No. 8977, April 17, 1997. Cases involving alleged civil rights violations committed by employers fall within the purview of the Act. See 775 ILCS 5/2-102(A). The Act defines an employer as "[a]ny person employing 15 or more employees within Illinois during 20 or more calendar weeks within the calendar year of or preceding the alleged violation." 775 ILCS 5/2-101(B)(1)(a).

The issue of whether an entity qualifies as an employer is jurisdictional in nature. Salas and Hickey, Melia, Kurfirst & Patterson Chartered, IHRC, ALS No. 11547, November 25, 2002. Proof of jurisdiction must be established by the complainant. Id. The Commission routinely dismisses cases where the complainant cannot establish that the respondent qualifies as an employer. See, e.g., Id.; Mahan and Tri-R-Disposal, Inc., IHRC, ALS No. S-10546, March 24, 1999.

The affidavits supplied in support of Respondent's Motion aver, *inter alia*, that: 1) YKK AP America maintains an office in Illinois, but never had 15 or more employees in Illinois, in that office or elsewhere, during the relevant time period; and 2) Respondent is an out-of-state corporation with no employees in Illinois during the relevant time period. (Affidavit of J. Harris at 1-2; Affidavit of R. Hudson at 2.) Complainant does not dispute, and has offered no affidavits or other evidence to challenge, either of those averments. Inasmuch as Respondent's affidavits stand uncontroverted, the facts contained therein must be accepted as true. Rotzoll v. Overhead Door Corp., 289 Ill. App. 3d 410, 418, 681 N.E.2d 156, 161 (4th Dist. 1997).

In short, Complainant has not established that either Respondent or YKK AP America qualifies as an employer, and Respondent's evidence suggests that neither does. As the Commission has noted:

> We will not search the record to find reasons to deny a motion. If a motion appears valid on its face, and if the other side cannot tell us why the motion should not be granted, we will grant the motion.

Jones and Burlington N. R.R., IHRC, ALS No. 1704, June 23, 1986. Therefore, Complainant's case must be dismissed. Moreover, because the Commission has no jurisdiction over a claim against either entity, the issue regarding which entity is the proper party respondent is moot.

Complainant's only argument to save his claim focuses on the fact that Respondent has another subsidiary with an office in Illinois, namely, YKK USA. Complainant does not claim ever to have been an employee of YKK USA. However, Complainant argues that YKK AP America and YKK USA should be viewed as one enterprise rather than two because the two companies do not function or operate as separate entities. Thus, according to Complainant, the employee lists of both companies should be combined to reach the requisite number of employees to confer jurisdiction upon the Commission.

Although Complainant's *pro se* response brief cites no law, the approach that he describes does have support in Commission precedent. In Hill and Byrd, IHRC, ALS No. 4997, June 29, 1998, the Commission considered the question of whether two affiliated corporations

may be viewed as one integrated enterprise for the purposes of determining whether a respondent has at least 15 employees. Relying on federal precedent, the Commission approved the consideration of the following factors to determine whether entities are sufficiently integrated: 1) whether there is an interrelation of the companies' operations; 2) whether there is centralized control of the companies' labor relations; 3) whether there is common management between the companies; and 4) whether the companies have common ownership or financial control. Id., citing NLRB v. Welcome-American Fertilizer Co., 443 F.2d 19 (9th Cir. 1971).

While Complainant's approach has legal support, he has offered no affidavits or other evidence regarding the management or operations of YKK USA or YKK AP America. Thus, there is no basis in the record file to conclude, based on the above factors, that YKK USA and YKK AP America are sufficiently integrated. Complainant's approach also has a more basic problem: Complainant has offered no evidence to establish how many employees YKK USA and YKK AP America had within Illinois during the relevant time period. Thus, even if there *were* evidence in the record file to prove that YKK USA and YKK AP America are sufficiently integrated, there is no evidence that the sum of the companies' Illinois-based employees equaled or exceeded 15 during the relevant time period anyway.

RECOMMENDATION

Based on the foregoing, the Commission lacks jurisdiction over this matter, and Respondent is entitled to a recommended order of dismissal as a matter of law. Accordingly, it is recommended that: 1) Respondent's Motion be granted; and 2) the complaint and underlying charge be dismissed in their entirety with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____

LESTER G. BOVIA, JR.
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: April 12, 2010